

Amend Subsection 27.82(a) and Add Sections 1.39, 1.49, and 27.83,
Title 14, California Code of Regulations
Re: Coastal Pelagic Species and Highly Migratory Species Defined,
Cowcod Conservation Area, California Rockfish Conservation Area (CRCA),
Restricted Species and Gear in the CRCA

- Changes in California's sportfishing regulations are needed to conform with federal groundfish regulations recently approved by the Pacific Fishery Management Council (Council) for 2003. Generally, these changes involve adjusting the current boundaries of the Cowcod Conservation Areas (CCAs), creation of a new California Rockfish Conservation Area (CRCA), and specifying species and gear restrictions within the CRCA.

Generally, under existing federal law, West Coast groundfish (includes rockfish, lingcod, and California scorpionfish) are managed by the Council pursuant to the Pacific Coast Groundfish Fishery Management Plan (Groundfish Plan) adopted to comply with policies and standards of the federal Sustainable Fisheries Act (Public Law 94-265). Federal regulatory actions taken to rebuild overfished stocks of rockfish and lingcod off the U.S. West Coast include federal rebuilding plans for these species that have severely reduced the areas and times where these species may be taken off California. Increasing federal restrictions on groundfish harvests have required the Fish and Game Commission (Commission) and Department of Fish and Game (Department) to adopt changes to both commercial and sportfishing regulations annually and in-season during each of the past several years to conform with changes in federal groundfish rules. The Commission adopts changes to groundfish sport fishing regulations through its general sportfishing regulatory authority (Fish and Game Code Section 205), while the Department conforms the State's commercial

groundfish regulations with federal rules and regulations through the authority of Fish and Game Code Section 7652.

Existing regulations define rockfish and lingcod management areas, and closure periods within management areas. Existing management areas include the CCAs off southern California, and the Northern, Central, and Southern Rockfish and Lingcod Management Areas. The regulations specify where and when rockfish, lingcod, California scorpionfish, and ocean whitefish may be taken and possessed within rockfish and lingcod management areas (Section 27.82, Title 14, CCR). Also, existing regulations specify the method of taking rockfish and lingcod (describe the number of hooks and lines, and define a hook) (sections 28.27 and 28.55, Title 14, CCR). Existing regulations do not currently define highly migratory species or coastal pelagic species for which certain gear restrictions are proposed within the CCA and proposed CRCA.

Changes in groundfish regulations are being proposed by the Commission to conform State regulations with federal groundfish rules that expand the boundary of the CCAs (will amend Section 27.82, Title 14, CCR). Proposed regulatory changes also create a CRCA off California in waters between 20 fathoms (120 feet) and 150 fathoms south of Point Reyes, Marin County, to the U.S.-Mexico border, and in waters between 20 fathoms and 250 fathoms between Point Reyes and 40°10' N. lat. near Cape Mendocino, Humboldt County (adds new Section 27.83, Title 14, CCR).

The change in the boundary of the CCAs will incorporate additional areas of ocean waters that include depths to 150 fathoms occupied by cowcod and other overfished rockfish species. This action is directed at protecting the overfished stock of cowcod which is the subject of a federal rebuilding program. Creation of the CRCA and restrictions on the take of specified species (rockfish, lingcod, California scorpionfish, and ocean whitefish) and gear types in this area are directed at reducing bycatch mortality of overfished stocks of shelf rockfish, including bocaccio, cowcod, darkblotched, and canary rockfishes, in fisheries that target species primarily other than rockfish and lingcod.

The new regulations will restrict the take of rockfish, lingcod, California scorpionfish, and ocean whitefish within the CRCA. The regulations will also define highly migratory species and coastal pelagic species, and further regulate the type, size, and amount of fishing gear in the CRCA that has the potential to incidentally take rockfish, including the take of rockfish as bycatch. Whitefish, while not groundfish, are found in association with shelf rockfish and, therefore, are restricted when rockfish and lingcod are restricted in order to avoid unnecessary bycatch mortality of overfished species of rockfish.

Hook-and-line sportfishing gear with more than one hook or lure and more than six ounces of weight attached is proposed to be restricted south of Cape Mendocino. Also, the proposed regulatory changes include several exceptions to the restrictions on hook and line gear when fishing for salmon, California halibut, sanddabs, and highly migratory and coastal pelagic species. These exceptions are proposed in order that anglers may continue to fish in a traditional manner for these species, while reducing the potential for take of rockfish as bycatch. These species are not generally found in association with rockfish and are prized by anglers for their fighting and eating qualities in the

case of salmon, California halibut, and highly migratory species; for their availability and authorized take in large numbers in the case of sanddabs (no daily bag limit); and for their use as bait in the case of coastal pelagic species.

These proposed regulatory changes were approved by the Council in September 2002 and are being adopted as federal rules by the National Marine Fisheries Service (NMFS). Final adoption of these sport fishing changes by the Commission is scheduled for its February 2003 meeting to ensure consistency between, and the ability to enforce, California's sport and certain commercial fishing regulations for the CRCA in State waters (0-3 miles from shore) and regulations adopted for federal waters (3-200 miles from shore) for 2003.

As background, about 60 species of rockfish, and lingcod, are designated as groundfish under the Groundfish Plan, along with several other bottom dwelling fishes. Rockfish are principally benthic (bottom) dwelling fishes that are currently categorized and managed under federal rules as either "minor nearshore" species (recently split further into "shallow nearshore", California scorpionfish (sculpin), and "deep nearshore" species), "shelf" species, or "slope" species, generally depending on the depth of water in which they occur. That is, these three assemblages of rockfish tend to be caught, respectively, over substrates that are either shallow or less than 20 fathoms (120 feet) (minor nearshore species), mid-depth or 20 to 150 fathoms (shelf species), and deep or greater than 150 fathoms (slope species).

Existing federal law requires that rebuilding plans be adopted for those groundfish stocks that are determined by the Council to be overfished. Seven species of rockfish along with lingcod are currently assessed as overfished, with rebuilding goals established and rebuilding expected to take several decades in the case of the overfished rockfish stocks. Overfished rockfish stocks off California include five shelf rockfish (bocaccio and cowcod that occur primarily south of Cape Mendocino, Humboldt County, and canary, widow, and yelloweye rockfish that occupy waters primarily off northern and central California).

Each year the Council adopts harvest guidelines (total poundage that may be safely taken) for groundfish stocks, including overfished species, that are intended to maintain sustainable stocks and fisheries in the case of healthy stocks, and provide for rebuilding of overfished stocks. In recent years, assessments of overfished stocks of rockfish indicate that populations of bocaccio, cowcod, yelloweye, and canary rockfish have declined to extremely low levels. As stock assessments indicate declines or lack of recovery in these populations, harvest guidelines adopted by the Council have been reduced along with imposition of further restrictions on sport and commercial fishing for rockfish and lingcod south of Cape Mendocino to provide for stock rebuilding.

The Council's 2003 harvest guidelines for cowcod, bocaccio, yelloweye, and canary rockfishes are so low that the Council acted to restrict all directed fishing for shelf rockfish south of Cape Mendocino during 2003. While the Council has adopted a total prohibition against fishing for rockfish in shelf waters south of Cape Mendocino for 2003 (these closures are dealt with in a separate rulemaking), the unregulated take of shelf rockfish as discarded bycatch also occurs in fisheries that do not target rockfish and lingcod.

Harvest data for fisheries off California indicate that the incidental take of overfished rockfish species as bycatch in fisheries may approach or exceed the total annual harvest guideline for some overfished rockfish. Therefore, unless measures are also taken to minimize bycatch in fisheries targeting species other than rockfish, the harvest guidelines for overfished stocks of rockfish may be exceeded, and rebuilding of these stocks will not occur.

- (b) Authority and Reference Sections from Fish and Game Code for Regulation:

Authority: Section 205, Fish and Game Code.

Reference: Section 200, 202, and 215, Fish and Game Code.

- (c) Specific Technology or Equipment Required by Regulatory Change:

None.

- (d) Identification of Reports or Documents Supporting Regulation Change:

Pacific Council News, A publication of the Pacific Fishery Management Council, October 2002, Vol. 26, No. 3. 28pp.

A Map of the 150 Fathom Enforcement Waypoints and Line, Cowcod Closure Addition. From Department of Fish and Game GIS Laboratory, Monterey, California, 1 pp.

National Marine Fisheries Service, May 29, 2002, Pacific Coast Groundfish, Open Access Fishery Report, Working draft utilized in support of adoption of annual harvest guidelines for groundfish at the September Council Meeting, 73 pp.

- (e) Public Discussions of Proposed Regulations Prior to Notice publication:

The Ad Hoc Groundfish Allocation Committee of the Pacific Fishery Management Council, held a meeting in Portland Oregon on August 28-29, 2002 to consider options for allocating total allowable harvests for 2003.

The Pacific Fishery Management Council held a five-day public meeting during the week of September 9-13, 2002 in Portland, Oregon, to consider and adopt groundfish management measures for 2003. Public testimony was provided by several individuals.

Both of these federal agency meetings were to discuss fishery issues related to these regulations.

IV. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

No alternatives were considered by the Commission because this would create an inconsistency between State and federal sportfishing regulations that would result in confusion for sport fishing participants and make enforcement of the regulations difficult.

(b) No Change Alternative: The no change alternative would impede federal groundfish rebuilding efforts.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

Fishing regulations for rockfish and lingcod have become increasingly restrictive since 2000. This has stemmed from actions aimed at protecting and rebuilding overfished groundfish stocks. The proposed regulations continue that trend, and continue the trend of increasing adverse impact on businesses that depend on those and associated fishery resources. The affected businesses include commercial fishing operations, the operations of commercial passenger fishing vessels, and the shoreside businesses that support those activities. However, the restrictions have not affected the ability of California businesses to compete with businesses in other states as the restrictions have been applied (to varying degree) coast wide.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

- (c) Cost Impacts on a Representative Private Person or Business:
The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Informative Digest/Policy Statement Overview

Existing regulations define rockfish and lingcod management areas, and closure periods within these management areas. Management areas include the Cowcod Conservation Areas off southern California, and Northern, Central, and Southern Rockfish and Lingcod Management Areas off California. Existing regulations specify where and when rockfish, lingcod, California scorpionfish, and ocean whitefish may be taken and possessed within rockfish and lingcod management areas (Section 27.82, Title 14, CCR). Also, existing regulations specify the method of taking rockfish and lingcod (describe the number of hooks and lines, and define a hook) (sections 28.27 and 28.55, Title 14, CCR). In addition, current regulations define salmon (Section 1.73, Title 14, CCR), but do not define highly migratory species or coastal pelagic species.

Changes in groundfish regulations are being proposed by the Fish and Game Commission (Commission) to conform State regulations with federal groundfish rules that expand the boundary of the Cowcod Conservation Areas off southern California (will amend Subsection 27.82(a), Title 14, CCR). Proposed changes also create a California Rockfish Conservation Area (CRCA) off California in waters between 20 fathoms (120 feet) and 150 fathoms south of Point Reyes, Marin County, to the U.S.-Mexico border, and waters between 20 fathoms and 250 fathoms between Point Reyes and 40°10' N. lat. near Cape Mendocino, Humboldt County (adds new Section 27.83, Title 14, CCR). The change in the boundaries of the Cowcod Conservation Areas will incorporate additional areas of ocean waters that include depths to 150 fathoms occupied by cowcod. This action is directed at protecting the overfished stock of cowcod which is the subject of a federal rebuilding program. Creation of the CRCA and restrictions on the take of specified species (rockfish, lingcod, California scorpionfish, and ocean whitefish) and gear types in this area are directed at reducing bycatch mortality of overfished stocks of shelf rockfish, including bocaccio, cowcod, and canary rockfishes, in fisheries that target other than rockfish and lingcod.

The new regulations will restrict the take of rockfish, lingcod, California scorpionfish, and ocean whitefish within the CRCA. The regulations will also further regulate the type, size, and amount of fishing gear in the CRCA that has the potential to incidentally take rockfish, including the take of rockfish as bycatch. Whitefish, while not groundfish, are found in association with shelf rockfish and, therefore, are restricted when rockfish and lingcod are restricted in order to avoid unnecessary bycatch mortality of overfished species of rockfish.

Hook-and-line sportfishing gear with more than one hook or lure and more than six ounces of weight attached is proposed to be restricted south of Cape Mendocino. Also, the proposed regulatory changes include several exceptions to the restrictions on hook and line gear. The exceptions are provided in order that anglers may continue to fish in a traditional manner for species such as salmon, California halibut, sanddabs, coastal pelagic species, and highly migratory species. These species are not generally found in association with rockfish and are prized by anglers for their game fish (fighting) and eating qualities in the case of salmon, California halibut, and highly migratory species; for their availability and authorized take in large numbers in the case of sanddabs (no daily bag limit); and for their use as bait fish in the case of coastal pelagic species. The proposed regulatory changes include the addition of definitions for highly migratory species and coastal pelagic species.

These regulatory changes were approved by the Pacific Fishery Management Council in September 2002 and are also being adopted as federal rules by the National Marine Fisheries Service. Final adoption of these sport fishing changes by the Commission is scheduled for its February 6-7, 2003 meeting to ensure consistency between, and the ability to enforce, California's sport fishing regulations for the CRCA in State waters (0-3 miles from shore) and regulations adopted for federal waters (3-200 miles from shore) for 2003.